Supreme Court, U.S.
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October Term 1997

No.

IN THE
SUPREME COURT OF THE UNITED STATES

KENNETH E. BULLOCK,

Petitioner.

v.

UNITED STATES OF AMERICA,

Respondent,

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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60 pp

QUESTION PRESENTED FOR REVIEW

Certiorari should be granted to clarify whether the petitioner's right of confrontation at the suppression hearing was violated and whether petitioner's right to equal protection was also violated by the District Court's refusal to allow cross-examination of the arresting officer regarding evidence of other stops made by this officer.

DESIGNATION OF PARTIES

The petitioner, Kenneth E. Bullock, was indicted by a federal grand jury on charges that, between January 1989 and December 1994, in the Eastern District of Virginia and elsewhere, he engaged in one count of conspiracy to distribute and possess with intent to distribute cocaine and cocaine base in violation of 21 U.S.C. §846, seven counts of distribution and possession with intent to distribute cocaine in violation of 21 U.S.C. §841(a)(1), four counts of distribution and possession with intent to distribute cocaine base in violation of 21 U.S.C. §841(a)(1), and eight counts of interstate travel in aid of narcotics trafficking in violation of 18 U.S.C. §1952(a)(3).

The United States of America is the respondent in this action.

There are no other parties to this action.

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October Term 1997

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PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The Order of the Fourth Circuit affirming the decision of the United States District

Court for the Eastern District of Virginia, Norfolk Division is included in the to this petition in the Appendix. (App. A)

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Fourth Circuit decided this case on August 30, 1996. A petition for rehearing was denied on September 20, 1996. (App. B)

The jurisdiction of this Court to review this judgment by petition for writ of certiorari is pursuant to 28 U.S.C, section 1254(1).

STATUTES INVOLVED

(A) The Sixth Amendment to the United States Constitution which provides, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor and to have the Assistance of Counsel for his defence."

(B) The Fourteenth Amendment to the Constitution, Section 1, which provides: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

© Rule 401, Federal Rules of Evidence which provides: "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

(D) Rule 402, Federal Rules of Evidence which provides: "All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Curt pursuant to statutory authority. Evidence which is not relevant is not admissible.

STATEMENT OF THE CASE

On December 1, 1994, a true bill of indictment was returned before a judge in open court in the United States District Court for the Eastern District of Virginia charging Kenneth Edward Bullock with one count of conspiracy to distribute and possess with intent to distribute cocaine and cocaine base in violation of 21 U.S.C. §846, seven counts of distribution and possession with intent to distribute cocaine in violation of 21 U.S.C. §841(a)(1), four counts of distribution and possession with intent to distribute cocaine base in violation of 21 U.S.C. §841(a)(1), and eight counts of interstate travel in aid of narcotics trafficking in violation of 18 U.S.C. §1952(a)(3).

On December 1, 1994, Bullock filed a Motion to Suppress certain evidence, and on January 25, 1995, a hearing was held in the District Court on the Motion to Suppress.

By its Memorandum Opinion and Order dated January 31, 1995, the District Court denied the Motion to Suppress in part and granted it in part. Bullock then entered into a plea agreement with the United States, in which he specifically reserved the right to

appeal the adverse determination of his suppression motion.

Pursuant to that plea agreement, on February 3, 1995, Bullock entered a conditional plea of guilty under Rule 11(a)(2) of the Federal Rules of Criminal Procedure to the one count of conspiracy to distribute and possess with intent to distribute cocaine and cocaine base in violation of 21 U.S.C. §846, and the United States moved to dismiss the other nineteen counts.

On June 12, 1995, Bullock was sentenced by the District Court to imprisonment for a term of 324 months.

The United States Court of Appeals for the Fourth Circuit decided this case on August 30, 1996. A petition for rehearing was denied on September 20, 1996.

At approximately 10:18 on Wednesday morning, July 13, 1994, Corporal Michael Lewis of the Maryland State Police was seated in his unmarked police cruiser parked in a Sears parking lot in Wicomico County,

Maryland. (Tr. pp. 4-5, 31, 100).[1]

The cruiser was perpendicular to and facing U.S. Route 13 and was parked approximately fifteen feet from the highway's deceleration lane. (Tr. pp. 102-103). Next to Corporal Lewis, in the front passenger seat was Trooper First Class Robert A. Gunter of the Maryland State Police, who had left his unmarked vehicle to sit in Corporal Lewis' cruiser and talk with him. (Tr. pp.5, 100-103).

Trooper Gunter had been sitting in the cruiser about twenty minutes when Corporal Lewis decided to pursue an out-of-state Nissan Maxima traveling southbound on U.S. Route 13 that was being driven by a black male in his twenties. (Tr. pp. 5-6, 33, 35, 37-38, 100) (Defendant's Exhibit 3).[2]

Corporal Lewis could see that the driver was a black male. (Tr. pp. 37-38). By reason

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[1]Janaury 25, 1995 Suppression transcript.

[2]"Exhibits" used in the January 25, 1995 Suppression Hearing.

of his education, training a[nd] experience, Corporal Lewis had a particu[lar] expertise in the area of narcotics enforc[e]ment, and he had been conducting dru[g] arrests for approximately nine years. (T[r.] pp. 28, 79) (Md. Tr. 18-19, 23).[3]

The area where Corpo[ral] Lewis was parked with Trooper Gunter on[e] morning of July 13, 1994, was located thre[e] to three-and-one-half miles from the De[la]ware border. (Md. Tr. pp. 21-22).

At a hearing on a motion [to] suppress in this case on January 25, 19[95] the defense offered incident reports sign[ed] by Corporal Lewis indicating that betwee[n] February 10, 1993, and August 29, 1994, [he] had made nine routine traffic stops [of] out-of-state vehicles in that area being d[riv]en by young black men southbound on U.S. [R]oute 13, had requested consents to search [of] the drivers, and had found drugs in the ens[u]ing searches. (Tr. pp. 82-86) (Defendant's [E]xhibit 6) (Tr.1

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[3] "(Md. Tr.)' Maryland Preliminary hearing transcript.

37-39)[4]

The District Court refused to allow the defense to examine Corporal Lewis' motives or modus operandi in other cases and did not admit the offered incident reports. (Tr. pp. 84-85).

At the suppression hearing, Corporal Lewis testified that he did not intend to request consent to search when he pursued and stopped the young black man driving the out-of-state Nissan Maxima southbound on U.S. Route 13 on the morning of July 13, 1994. (Tr. pp. 5, 7, 37-38, 43). According to Corporal Lewis, the Nissan Maxima had appeared to be exceeding the speed limit on U.S. Route 13 when it first drove past him, although he did not clock the vehicle's speed at that time. (Tr. pp. 5, 32-33, 38). Corporal Lewis further claimed that he was able to see a crack on the upper driver's side of the Maxima's windshield as it passed in front of him from his left to his right. (Tr. pp. 5, 32-33, 38, 102-103).

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[4] "(Tr.1)" February 3, 1995 transcript.

When the Maxima went past Corporal Lewis, it was twenty to twenty-five feet away and appeared to be traveling in excess of forty-five miles-per-hour. (Tr. pp. 5, 32-34, 109). At the suppression hearing, Corporal Lewis drew a circle on two photographs of the Maxima to indicate where the crack in the windshield was.[5] (Tr. pp. 34-37, 96, (Defendant's Exhibits 1 & 2)

When Lewis was cross-examined regarding his testimony that he had observed a crack in the windshield of the Maxima as it passed in front of him on U.S. Route 13. Corporal Lewis was shown two photographs of the Maxima, and he testified as follows:

A These photographs were taken on December the 27th of 1994, Your Honor.
Q December 27th?
A Yes, sir.
Q All right. Now, does the vehicle appear to be in the same condition that it

---

[5] Defendant's Exhibits 1,2,7 and 8.

A With the exception of some yellow chalk writing across the front windshield.

Q You see the chalk writing on the windshield; is that correct?

A I do, yes, sir....

Q Wouldn't you say that you were closer to the vehicle as you view the photographs on the witness stand than you were on July 13th of 1994 last year?

A Yes, sir, that's correct.

Q Now, do you see a cracked windshield in either one of those exhibits?

A I do.

Q Where is it?

A Because I am familiar with the vehicle. I know exactly where the crack is.

Q Where is it? Would you circle it?

A Yes, sir....

Q And you have for the

record made circles on the windshield; is that correct, sir?

A Yes, sir.

Q Where you believe the crack is, is that correct, sir?

A Where I know the crack is, yes, sir.

(Tr. pp. 35-37).

At the conclusion of Corporal Lewis' examination at the suppression hearing of January 25, 1995, the District Court Judge had some questions for him regarding the Maxima's windshield and the photographing of it by police:

Q With respect to the windshield crack, approximately how long was the windshield crack again?

A 12 inches, Your Honor, approximately 12 inches.

Q Were you on the side of the street where the crack was located or on the opposite side where

the car passed you? In other words, were you on the passenger side or the driver's side?

A I was on the passenger's side.

Q Now, I have looked at these photos, Trooper Lewis, and I will be candid with you. I can't see one single thing in that photograph. I see your circle, but I can't see a thing.

A The average person can't, Your Honor.

Q I am the person that has to make the determination and I can't see anything.

A Yes.

Q My question to you is this: Did anyone make any pictures at all of this vehicle back around July 13th, I mean for the Maryland State Police purposes?

A No, sir.

Q Do you have a policy or

practice that requires you to make pictures of a vehicle when you take it apart the way you took this particular vehicle apart?

A No policy, Your Honor, but generally we would take photographs. We were so caught up in the arrest procedures and everything that was going on, there weren't any photos taken...

Q When was the last time you saw the pictures [of the Maxima] before today?

A A few weeks ago when I initially received them from the trooper who photographed the vehicle for me.

Q So when you saw those pictures a few weeks ago, you knew it was very difficult to see that crack in the windshield; is that correct?

A No, sir. The crack really

didn't have any significance to me at that point in time. I didn't know it was going to be an important factor in this case today, the crack in the windshield, so I never bothered to look for it, Your Honor.

(Tr. pp. 96-98).

Corporal Lewis stopped the Maxima on the Route 13 Bypass just north of U.S. Route 50. (Tr. pp. 7) (Defendant's Exhibit 3) He testified that he stopped the vehicle for the purpose of issuing warnings for both the speed and the cracked windshield, and that he did not intend at that time to request consent to search the Maxima. (Tr. pp. 6-7, 39, 43).

The colloquy with Lewis regarding the issuance of warnings after he stopped the vehicle was as follows:

Q. Is it a violation of the Maryland State motor vehicle laws to drive a vehicle with a cracked windshield?

A. With any defective equipment,

yes, sir.

Q. All right. And is it a citable offense to give a person a ticket for having defective equipment?

A. It is.

Q. And is it a citable offense in the State of Maryland to give a person a ticket for speeding?

A. It is.

Q. Did you give Mr. Bullock a ticket for having a cracked windshield on this day?

A. I did not.

Q. Did you give Mr. Bullock a ticket for speeding on this day?

A. I never intended to, no sir.

Q. Did you give him a warning?

A. Yes, sir.

Q. You have got a written warning in your file?

A. No, sir.

Q. Where is it?

A. I don't have it in my file.

Q. Well, don't you keep a copy of it?

A. The barrack maintains copies of it.

(Tr. 38-39)

Lewis was then shown his written report of the incident, Defendant's Exhibit 3 and was asked to review it to see whether he had made any mention in the report of issuing Bullock a warning for speeding. After reviewing the report, he stated he found nothing in the report mentioning the issuance of a warning for speeding. (Tr. 42-43)

Trooper Gunter who was sitting in Lewis' police vehicle was called as a witness by the government. On cross-examination, he was asked to circle the crack in the windshield in the two photographs of the vehicle. (Defendant's Exhibits 12 and 13). The following colloquy regarding this request occurred:

Q. Does that appear to be the vehicle we are talking about, sir?
A. Yes, it does, item 12 and 13.
Q. All right. Would you put a circle around the crack that you see in that windshield at this time, sir?
A. I can put a crack in the vicinity where the crack –
Q. No. I want you to put a circle where you see that crack in that

windshield now...

A. That crack is not showing in these two photographs.

Q. It's not showing?

A. Not to me.

Q. All right sir. Thank you. So it's your testimony you do not see a crack in exhibits 12 or 13; is that correct, sir?

A. Due to the chalk marks there, I can't see the crack in these photos.

(Tr. 105-106)

REASON FOR GRANTING THE WRIT

CERTIORARI SHOULD BE GRANTED TO CLARIFY WHETHER THE PETITIONER'S RIGHT OF CONFRONTATION AT THE SUPPRESSION HEARING WAS VIOLATED AND WHETHER PETITIONER'S RIGHT TO EQUAL PROTECTION WAS ALSO VIOLATED BY THE DISTRICT COURT'S REFUSAL TO ALLOW CROSS-EXAMINATION OF THE ARRESTING OFFICER REGARDING EVIDENCE OF OTHER STOPS MADE BY THIS OFFICER.

At the suppression hearing of January 25, 1995, the District Court violated Bullock's right of confrontation by refusing to allow cross-examination of Corporal Lewis and introduction of evidence relating to his prior use of race-based drug courier profiles in deciding to initiate traffic stops for minor offenses and seek consent to search.

Not only was the disallowed cross-examination and evidence necessary to a determination of whether Bullock's race was solely based on racial considerations, thus implicating an a denial of Bullock's right to Equal Protection, this evidence also went to the credibility of Lewis, insofar as he testified that he did not intend to seek consent to search at several steps along the way of his encounter with Bullock.

It was and continues to be Bullock's contention that Lewis' stop of his vehicle was motivated, not by some inarticulable or intuitive suspicion, but by Bullock's race, a classification that is always suspect and is subject to strict scrutiny by the courts.

The Court must therefore find that the stop was unreasonably pretextual.

Corporal Lewis was doing more than just

sitting in his cruiser talking with Trooper Gunter: It is fairly obvious that he was engaged in drug interdiction. A senior officer with a particular expertise in narcotics enforcement, Corporal Lewis had sat in an unmarked car in a Sears parking lot fifteen feet from U.S. Route 13 facing traffic for twenty minutes before finally deciding to pursue and stop, for a minor traffic offense and equipment violation, a young black man traveling southbound in an out-of-state vehicle.

In support of the race based theory, Bullock was successful in challenging the two non-racial reasons proffered by Lewis for the stop, to wit, speeding and defective equipment (a cracked windshield).

The case of United States v. Travis, 62 F.3d 170 (6th Cir. 1995), cert. denied, 166 S.Ct. 738 (1996), is directly on point and is applicable to this case. In Travis, airport police officers at Cincinnati/Northern Kentucky Airport watched passengers disembark from an arriving Los Angeles flight for purposes of catching drug couriers. This particular flight was chosen because it had previously been the source of drug arrests.

The officers had done some background investigation regarding the passenger list of the arriving flight and decided that they would focus on an arriving female passenger with an Hispanic name. They explained that the passenger whose name was "Angel Chavez" piqued their interest because this passenger had purchased a one-way ticket about five hours before the flight, and that the juxtaposition of the name was a bit unusual. The officers decided to find this passenger and question her.

After all of the passengers left the plane, they did not spot an Hispanic female. They then focused on two African-American females who were unaccompanied. The first woman was eliminated because she had a round trip ticket. The officers then approached the defendant who produced a one-way ticket with the name Angela Chavez and an Ohio driver's license with the name Angela Travis. Travis consented to a search of her luggage and cocaine was found.

Travis filed a motion to suppress on the grounds that the detectives had discriminated against her because of her race when the police selected her for a consensual search. See United States v. Travis, 837 F.Supp.

1386 (E.D.Ky. 1993).

It was conceded at the suppression hearing that Travis' motion was not based on a Fourth Amendment violation, but an Equal Protection violation. The District Court denied the motion to suppress, and like Bullock, Travis entered a conditional plea of guilty, reserving the suppression issue for appeal.

The Sixth Circuit held that consensual searches may violate the Equal Protection Clause when they are initiated solely based on racial considerations, even though they are permissible under the Fourth Amendment, citing one of its unpublished opinions, United States v. Jennings, 985 F.2d 652 (6th Cir. 1993) (unpublished).

The Travis Court acknowledged that there exists a dispute as to what remedial action is appropriate where a stop occurs solely for racial reasons, but did not resolve this quandary because there was evidence that the police did not interview the defendant solely because of her race.

It is also noteworthy that the Court in Travis, considered incident reports compiled

by the Airport police which revealed that "have interviewed a disproportionate number of minorities...[b]ut the methodology used to complete these numbers is deeply flowed -- so much so the numbers do not reliably report any data that could give rise to an inference of racial discrimination."

Because the Court in Travis made a specific finding that the police developed several reasons to approach the defendant which were "completely independent of her race", the statics and other evidence did not trigger burden shifting requirement that the officers than must produce evidence that contradicts the claim that they acted solely on racial considerations.

The instant case differs from Travis in two important aspects: first, the Travis court allowed the defense to introduce historical evidence regarding prior stops; and second, Bullock successfully challenged the non-racial reasons for the stop.

Based on the Travis holding, Bullock was entitled to introduce and confront Lewis with evidence regarding his stops made within that eighteen-month period, nine of which involved African American drivers where Lewis' modus operandi in making these stops were identical

to the stop in the instant case. Defense counsel was not allowed to question Corporal Lewis on this subject.

In Whren v. United States, 116 S.Ct. 1769 (1996), the Court held that under a 4th Amendment analysis, the constitutional reasonableness of a traffic stop does not depend on actual motivation of the officers, thus an argument of a pretextual stop was rejected by the Court. The Court however observed that the Constitution prohibits selective enforcement of the law based on considerations such as race pursuant to the Equal Protection Clause rather than the Fourth Amendment.

Bullock also argues that the District Court violated his right of confrontation by refusing to allow cross-examination of Corporal Lewis and also ruling that relevant evidence relating to Lewis' prior use of race-based drug courier profiles in initiating traffic stops was not admissible.

It has been held that where race is relevant in a criminal case a defendant should be entitled to explore this issue through examination of witnesses. See Turner v. Murray, 476 U.S. 28, 106 S.Ct. 1683 (1986).

Bullock adamantly contends that Lewis' use of race-based profiles in making traffic stops is a relevant area of inquiry under the Equal Protection Clause.

The Sixth Amendment provides that a criminal defendant has the right to present his best defense. United States v. Abbas, 74 F.3d 506 (4th Cir. 1996), cert. denied, 116 S.Ct. 1868 (1996). See also, United States v. Wilson, 953 F.2d 116, 124 (4th Cir. 1991). Also Rules 401 and 402 of the Federal Rules of Evidence require that this evidence should have been admitted.

Lewis testified that he did not intend to seek consent to search at several steps along the way of his encounter with Bullock. To the extent cross-examination and other evidence could have shown that such testimony was false, this would have effected Lewis' credibility, an issue of primary importance in this case, because the government relied on Lewis' testimony to establish the legality of the initial stop. Thus, Bullock lost his right of cross-examination and confrontation, as well as the right to effective assistance of counsel to uncover the truth by examining rigorously the reliability of conflicting evidence presented. United States v. Baker, 45 F.3d

837, 844 (4th Cir. 1995), cert. denied, 116 S.Ct. 194 (1996); see Maryland v. Craig, 497 U.S. 836 (1990)(where the Court discussed the central concerns of the Confrontation Clause).

An important case which bears heavily on the confrontation issue can be found in Miranda v. Cooper, 967 F.2d 392 (10th Cir. 1992), cert. denied, 506 U.S. 924 (1993), in which an informant testified for the government. The defendant had evidence that the informant in other drug dealings had switched drugs in some of these cases. The District Court refused to allow defense counsel to elicit the specifics of these other instances, but did allow the defense to get before the jury the informant's statements that he had "set up" the defendant; that he had previously "ripped off" the police and that the informant had the opportunity to plant the cocaine which was the subject matter of the prosecution in the defendant's home.

The 10th Circuit reasoned that the important aspects of impeachment evidence regarding the informant was presented to the jury, thus the specifics of prior instances was neither necessary or relevant.

In contrast, Bullock was denied the opportunity to present any evidence regarding Lewis' prior stops, thus the District Court as the trier of fact, was not presented with impeaching evidence which impacted on Lewis' credibility.

The right of confrontation applies at a suppression hearing since a suppression hearing is a critical state of the prosecution. Ergo, any limitations on the right of cross-examination must be justified by weighty considerations. See United States v. Clark, 475 F.2d 240 (2nd Cir. 1978), United States v. Hodge, 19 F.3d 51 (D.C. Cir. 1994).

The District Court in the instant case found wanting the credibility of Lewis with regard to his assertion that Bullock's vehicle had a cracked windshield, which was one of the reasons which prompted him to stop the vehicle. Once Lewis' credibility became an issue, the District Court's limitation on the use of prior incidents was wrongly decided.

"'It is the essence of a fair trial that reasonable latitude be given the cross-examiner, even though he is unable to state to the court what facts a reasonable cross-examination might develop'". Smith v. Illinois,

390 U.S. 129, 132, 88 S.Ct. 748 (1968), quoting Alford v. United States, 282 U.S. 687, 692, 51 S.Ct. 218 (1931).

Cross-examination of Corporal Lewis regarding previous stops and consent searches by him of out-of-state vehicles driven southbound on U.S. Route 13 by young black men may very well have cast doubt on the credibility of his testimony regarding his racial animus and would have supported an argument that he denied the equal protection rights of Bullock by making the stop solely on Bullock's race.

The right of cross-examination is a substantial right and a safeguard essential to a fair trial; its denial without waiver is "`constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it.'" Smith, 390 U.S. at 131, quoting Brookhart v. Janis, 384 U.S. 1, 3, 86 S.Ct. 1245 (1966).

CONCLUSION

Because the District Court denied Bullock's right of confrontation at the suppression hearing, his conviction must be reversed.

Respectfully submitted

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APPENDIX A

PUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v. No. 95-5088

KENNETH EDWARD BULLOCK, a/k/a K.B., a/k/a Pete,
Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Raymond A. Jackson, District Judge. (CR-94-160)

Argued: July 10, 1996
Decided: August 30, 1996

Before NIEMEYER, MICHAEL, and MOTZ, Circuit Judges.

Affirmed by published opinion, Judge Niemeyer wrote the opinion, in which Judge Michael and Judge Motz joined.

COUNSEL

ARGUED: Anthony George Spencer, MORCHOWER, LUXTON & WHALEY, Richmond, Virginia, for Appellant. Laura

Marie Everhart, Assistant United States Attorney, Norfolk, Virginia, for Appellee. **ON BRIEF:** Michael Morchower, Christopher C. Booberg, MORCHOWER, LUXTON & WHALEY, Richmond, Virginia for Appellant. Helen F. Fahey, United States Attorney, Norfolk, Virginia, for Appellee.

OPINION

NIEMEYER, Circuit Judge:

After Kenneth E. Bullock was indicted for various federal narcotics offenses, he filed a pretrial motion to suppress, **inter alia**, more than nine kilograms of cocaine discovered during a search on July 13, 1994, of the automobile he had been driving. When the district court refused to suppress the cocaine, Bullock pled guilty to conspiring to distribute and to possess with the intent to distribute cocaine and cocaine base, in violation of 21 U.S.C.
§ 846. The district court sentenced him to 324 months imprisonment. In his plea agreement, Bullock reserved for appeal his right to challenge the search and evidentiary rulings made at the suppression hearing.

APPENDIX A

On appeal, Bullock contends that the automobile search violated his Fourth Amendment rights because (1) his traffic stop was pretextual; (2) his consent was produced by "pressure and coercion"; (3) his consent did not permit police to cut open the automobile's concealed compartment; (4) his arrest was not supported by probable cause; and (5) his arrest, even if valid, did not justify a warrantless search of the car. Bullock also contends that the district court violated his constitutional right to confront the officer who had stopped him by refusing, during the suppression hearing, to allow him to present evidence and to cross-examine the officer about his practice of escalating traffic stops of young black males into drug interdiction searches. Because we find Bullock's contentions without merit, we affirm.

I

Late in the morning of July 13, 1994, Maryland State Police Officers M.A. Lewis and R.A. Gunter stopped a brown Nissan Maxima which had a cracked windshield and was proceeding on Route 13 in Salisbury, Maryland, at 61 miles per hour in a 55-mile-per-hour zone. The driver, Kenneth E.

Bullock, was unable to produce a driver's license or any other identification, but he did hand Officer Lewis the car's registration, which was in the name of "Quincy Jones." In retrieving the registration from the center console, Bullock quickly opened and closed the lid and attempted to block Officer Lewis' view of the console's contents with his shoulder. Officer Lewis nevertheless was able to observe a large bundle of cash in the console, secured with a rubber band. Lewis also observed two cellular telephones and a beeper elsewhere in the car. At the time of the stop, Raheema Watson was reclining in the passenger seat.

After receiving the car registration, Lewis asked Bullock to step out to the rear of the car to answer some questions. Bullock falsely identified himself as his brother, Keith J. Bullock, and stated that he was returning to Norfolk, Virginia, after having picked up his girlfriend from "the college" in Dover, Delaware. Bullock also claimed that Quincy Jones was a friend who had lent him the car.

Officer Lewis then questioned Raheema Watson separately. She too said

that Bullock's name was Keith and that he had just picked her up from college in Delaware. But Watson could not tell Officer Lewis the name of the college. And, while talking to Lewis, Watson frequently looked over her shoulder in Bullock's direction.

Officer Lewis returned to Bullock and asked him about the money. Bullock represented that the roll contained $600 to $700. Lewis then asked Bullock if the car contained any drugs or weapons. Bullock responded negatively and said that Officer Lewis could check the car if he wished.

At that point, Officer Lewis removed the cash from the center console and approached Bullock. As Lewis began counting the money, Bullock admitted that the bundle contained over $2,000. He stated that he had planned to use the money on a shopping trip in Norfolk and again told Officer Lewis that he could search the car.

Officer Lewis then presented Bullock with a standard Maryland State Police consent-to-search form, which advised Bullock of his right to refuse consent to search the car, informed Bullock that signing

the form acknowledged that he had given his knowing and voluntary consent "without fear, threat, or promise either express or implied," and stated that consent to search the car included "any suitcases, boxes or other containers within" the car. After Officer Lewis read and explained the form, Bullock indicated that he understood it and signed the form "Keith Bullock."

During his search of the car, Officer Lewis first found a fully loaded 15-round, 9 millimeter clip containing "Black Talon" ammunition. Searching for a weapon, Officers Lewis and Gunter pulled the back seat down to discover a door and false compartment that appeared to have been professionally installed. As he attempted to open the compartment, Officer Lewis observed Bullock acting nervously. Lewis then instructed Officer K.J. Plunkert, who had been called for backup, to arrest Bullock and Watson.

After attempting unsuccessfully to open the secret compartment, Officers Lewis and Gunter drove the cars to a nearby state police barracks where Lewis cut the compartment

open and discovered 9.7 kilograms of cocaine.

On December 1, 1994, Bullock was charged in a 20-count indictment with various federal drug offenses. He filed a pretrial motion to suppress, **inter alia**, the cocaine that had been discovered during the July 13, 1994, search of the car he had been driving.

At the suppression hearing, Bullock sought to introduce for impeachment purposes a series of incident reports involving stops that Officer Lewis had made from February 1993 through August 1994. Bullock argued that the reports revealed Lewis' **modus operandi** of using routine traffic stops to obtain drivers' consent to search. The district court refused to permit the evidence and any cross-examination about Lewis' prior stops, explaining that while the legality of a search must be based on the totality of circumstances, evidence concerning past stops would enmesh the court in collateral issues. The court further noted that there was sufficient evidence to allow it "to make th[e] determination [as to whether Officer Lewis had sufficient justification] without going back

and trying to examine his motives or his MO in other kinds of cases."

After the hearing, the district court denied Bullock's motion to suppress the cocaine, and Bullock entered into a plea agreement with the United States. Pursuant to the agreement, Bullock conditionally pled guilty to Count I of his indictment, which charged him with conspiring to distribute and to possess with the intent to distribute cocaine and cocaine base, in violation of 21 U.S.C.
§ 846, and the government dismissed the remaining counts.

This appeal followed.

II

Bullock first contends that the district court erred in refusing to permit him to introduce evidence concerning Officer Lewis' prior traffic stops and to cross-examine Lewis about them. We disagree.

The district court astutely recognized the danger of enmeshing the court in mini-trials about each of Officer Lewis' past stops.

Focusing on such collateral matters would unduly encumber the court's proceedings. Moreover, Officer Lewis' subjective motives are irrelevant to a proper Fourth Amendment analysis. **See Whren v. United States,** 116 S.Ct. 1769, 1774 (1996). Finally, Bullock failed to lay any foundation for an equal protection challenge based on racially selective enforcement procedures. Id. (selective enforcement based on race implicates equal protection, not Forth Amendment); **see also Armstrong v. United States,** 116 S. Ct. 1480, 1486 (1996) (standard for establishing Fifth Amendment selective-prosecution claim is "a demanding one").*

III

Turning to the automobile search, Bullock does not deny that after Officer Lewis stopped him, he gave Lewis consent to search the automobile. He argues, rather, that the stop was motivated by a race-based drug courier profile and that his consent was produced by pressure and coercion. These contentions are without merit. Officer Lewis' motives for stopping an automobile that was violating traffic laws is irrelevant to the

legitimacy of the stop under a Fourth Amendment analysis. **See Whren**, 116 S. Ct. at 1774. And while racially motivated law enforcement can violate the equal protection component of the Fifth Amendment's Due Process Clause, **see id.**, Bullock has failed to meet the rigorous standard for proving such a violation, **see Armstrong,** 116 S. Ct. at 1486. Also, we find no evidence that the officers placed undue pressure on Bullock to sign the consent form. On the contrary, before signing the form, Bullock had

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*Because of our rulings here, we deny Bullock's motion to supplement the record or to take judicial notice of these earlier, unrelated incidents.

eagerly offered his consent to Officer Lewis two times.

Bullock argues further that the scope of his consent did not include breaking open secret compartments and that the police did not have probable cause for such a search. Even though Bullock's written consent encompassed "suitcases, boxes or other containers" within the car, we need not decide whether a consent to search authorizes breaking into a secret compartment. The officers in this case had probable cause to believe that the car Bullock had been driving contained contraband and, therefore, were justified in searching it without a warrant under the well-established "automobile exception." **See United States v. Gastlaburo,** 16 F.3d 582 (4th Cir.), cert. denied, 115 S. Ct. 102 (1994).

After the police officers legally stopped Bullock for traffic violations, he was unable to produce a driver's license or other identification. Although Bullock attempted to conceal Officer Lewis's view of the center console, Lewis observed a large roll of cash, and, elsewhere in the car, two cellular

telephones and a beeper. After Bullock consented to a search of the vehicle, moreover, Lewis discovered ammunition and a secret compartment, often used, in Lewis' experience by drug traffickers to conceal contraband. And as the officers tried to open the concealed compartment, Bullock acted nervously. Finally, Bullock and his passenger gave incredible explanations for their trip, claiming that Bullock was transporting his girlfriend home from a college that neither of them could name. We believe that these circumstances, taken in their totality, provided the officers with probable cause to conduct the automobile search.

Accordingly, we affirm the judgment of the district court.

AFFIRMED

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED
SEPTEMBER 24, 1996

No. 95-5088
CR-94-160

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

KENNETH EDWARD BULLOCK, a/k/a K.B.,

a/k/a Pete

Defendant - Appellant

On Petition for Rehearing with Suggestion for

Rehearing In Banc

APPENDIX B

The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court or the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied.

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

For the Court,

/s/Patricia S. Connor

ACTING CLERK